

## SURETIES AND CONTRACTOR FOR CONSTRUCTION OF BELLEFOURCHE IRRIGATION PROJECT.

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FEBRUARY 17, 1910.—Committed to the Committee of the Whole House and ordered  
to be printed.

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Mr. ENGLEBRIGHT, from the Committee on Irrigation of Arid Lands,  
submitted the following

### REPORT.

[To accompany H. R. 21225.]

The Committee on Irrigation of Arid Lands, having had under consideration the bill (H. R. 2522) for the relief of the First National Bank, of Bellefourche, S. Dak., having considered the said bill and subject-matter in connection therewith, in lieu thereof respectfully submits and recommends the passage of the bill which this report accompanies:

The evidence brought before the committee tends to show the following facts: That on February 10, 1905, the honorable Secretary of the Interior caused an advertisement to be published calling for sealed proposals for the work provided in schedule 2 of the main supply canal of the Bellefourche irrigation project in South Dakota in accordance with the specifications prepared therefor; that the said specifications, among other things, provided in specification No. 35 as follows:

*Claims for work and material.*—The contractor shall promptly make payments to all persons supplying labor and materials in the prosecution of the work, and a condition to this effect shall be incorporated in the bond to be given by the contractor in pursuance of the act of Congress approved August 13, 1894 (28 Stat., 278).

That the act of Congress approved August 13, 1894, and referred to herein was entitled "An act for the protection of persons furnishing material and labor for the construction of public works," and provides, among other things, that any person or persons entering into a contract with the United States for the prosecution of any public work shall be required, before commencing such work, to execute a penal bond with good and sufficient sureties, and—

with the additional obligation that such contractor or contractors shall promptly make payments to all persons supplying him or them labor and materials in prosecution of the work provided for in such contract—

And that persons—

supplying such labor and materials shall have a right of action and shall be authorized to bring suit in the name of the United States for his or their use and benefit against said contractor and sureties and to prosecute the same to final judgment and execution: *Provided*, That such action and its prosecution shall involve the United States in no expense.

The effect of this act was to give the persons supplying material and labor for the prosecution of public works a right of action upon the contractor's bond and to give such persons a prior right for compensation in advance of the claims of the United States in so far as the contractor's bond was concerned. The contract for the construction of the main supply canal of the Bellefourche irrigation project was executed by the Secretary of the Interior on behalf of the United States, and by the Widell-Finley Company, a Minnesota corporation, on its own behalf, and bears date April 26, 1905. This contract recites that it is made "in accordance with the terms of the attached advertisement, proposal, and specifications, the same being made a part of this contract \* \* \*." Attached to and a part of the contract was a copy of the advertisement of February 10, 1905, and also a copy of the proposal and specifications for the construction of the said canal, containing section 35, making provision for the protection of claims for work and material by the bond to be given under the act of August 13, 1894, as herein set forth.

On February 24, 1905, Congress passed an act the effect of which was to repeal the act of August 13, 1894, and to postpone the rights and claims of persons furnishing material and labor in the construction of public works to the claims of the United States in connection therewith. In other words, the effect of the act of February 24, 1905, would be to give the claims of the United States priority over labor and material claims, which were made prior by the act of August 13, 1894, as to the protection afforded by the bond of the contractors.

Neither the bondsmen nor the contractors were aware of the act of February 24, 1905, when they entered into the contract for the construction of this main canal, for both in the advertisement and in the contract reference is made to the act of August 13, 1894.

The verified petition of the First National Bank of Belle Fourche sets forth that the bank advanced the sum of \$17,680.04 for laborers' time checks for work done by laborers under this contract and the sum of \$2,000 to Widell-Finley Company upon their promissory note for money advanced with which to pay for labor used upon the said public work. The said verified petition also sets forth that before making the said advance the bank received legal advice and counsel as to whether they would be protected in such advances by the contractor's bond; that the bank was assured and advised that the act of August 13, 1894, referred to in the contract would fully protect the claims for labor and material and would fully protect the bank as assignee of such claims, and that, relying upon the said advice and assurances as set forth in the said contract, the bank advanced or paid the amount of money herein set forth for the said purposes.

It appears to the committee that these facts make a very strong equitable case. There may be other persons similarly situated toward the work done under this contract. Apparently all persons proceeded in ignorance of the changed condition of the law, and this case affords

a striking illustration of the strong equity that always arises where the parties to a contract act under a mutual mistake of the law. It would be manifestly unjust for the irrigation project to accept the full benefit of the work performed by the laborers, and the materials furnished under the contract, and not allow to the parties interested the protection of the bond and its sureties as recited both in the advertisement and in the contract itself.

This case affords no precedent whatever for legislation that would afford relief to laborers or material men under other contracts for work under the national irrigation act, since the law of February 24, 1905. It is possible that no other contract was made for which the advertisement for bids and proposals was being published at the time that the modified law was passed. Evidently, after obtaining knowledge of the law of February 24, 1905, the department prepared its specifications to conform to the modified law, and that all subsequent contracts were made in compliance therewith. It also appears from the evidence submitted that the United States withheld from the contractors, at the time the work was stopped by the contractors upon the construction, about \$23,000 at that time due the contractors, which amount the United States has applied toward the completion of the work covered by the contract.

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DEPARTMENT OF THE INTERIOR,  
UNITED STATES RECLAMATION SERVICE,  
Washington, D. C., January 31, 1910.

SIR: In compliance with your request at the hearing before the subcommittee to-day, the following information is submitted regarding contract No. 37 with the Widell-Finley Company for the construction of the main supply canal, Belle Fourche project, which is involved in the bill (H. R. 2522) for the relief of the First National Bank of Belle Fourche, S. Dak.

The Government has paid to the Widell-Finley Company for estimates covering the work completed to December 31, 1905.

The value of the work performed by the company and retained by the United States consists of the following items, (1) 20 per cent of the amount earned to December 31, which under the terms of paragraph 64 of the contract is held back until the completion of the work by the contractor to the satisfaction of the Government, amount to \$10,726; (2) the estimate for the work done in January, 1906, \$9,024.38; (3) estimate for the work performed up to the date of bankruptcy, February 15, 1906, \$3,917.20; total, \$23,667.58.

In answer to your question regarding the added cost per acre to the settler which would result from the Government releasing its prior right to the proceeds of the bond which it might claim under the act of February 24, 1905, it is very difficult to make a statement.

The charge for the project heretofore announced is \$30 per acre of irrigable land. The amount of irrigable land already covered by completed work is about 50,000 acres. The total amount estimated to be irrigated under the project is 100,000 acres. The area over which the \$21,500 would be distributed in case the Government could not collect it would depend upon the acreage not opened to water-right application at the time this matter is finally settled and the exact amount of the government loss is determinable. Assuming that this amount would be one-half the irrigable acreage of 50,000 acres the distribution of the sum of \$21,500 would be equivalent to 43 cents per acre or \$34.40 for the usual 80-acre farm unit taken by the settler.

Very respectfully,

MORRIS BIEN, *Supervising Engineer.*

HON. W. F. ENGLEBRIGHT,  
*House of Representatives.*

[H. R. 2522, Sixty-first Congress, first session.]

A BILL For the relief of the First National Bank of Bellefourche, South Dakota.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the First National Bank of Bellefourche, South Dakota, is hereby given the full rights and remedies afforded to persons supplying labor and materials in the prosecution of public works as set forth in the act of August thirteenth, eighteen hundred and ninety-four, entitled "An act for the protection of persons furnishing materials and labor for the construction of public works," to the same force, extent, and effect as if the act had not been amended, modified, or repealed, upon its claim for and in connection with certain labor and materials for the prosecution of the work of making the main canal of the Bellefourche irrigation project, under the contract for the construction thereof, entered into by the Widell-Finley Company under date of April twenty-sixth, nineteen hundred and five, with full right of action in the name of the United States under the said contract: *Provided,* That such action and its prosecutions shall involve the United States in no expense nor liability.

